

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MARISA FUSARO,)	
)	
Plaintiff,)	
)	
v.)	Case No. 02CV4698
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER

AND NOW on this _____ day of _____, 2002, upon consideration of Defendant United States' Motion to Strike, it is hereby ORDERED that plaintiff Marisa Fusaro's request for punitive damages in the Complaint is stricken for the reasons set forth in the United States' motion to strike and incorporated memorandum of law.

U.S.D.J.

UNITED STATES DISTRICT COURT
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MARISA FUSARO,)	
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Plaintiff,)	
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)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

DEFENDANT'S MOTION TO STRIKE JURY DEMAND
AND INCORPORATED MEMORANDUM OF LAW

Under 28 U.S.C. § 2402, defendant United States of America, by its attorneys, Patrick L. Meehan, United States Attorney for the Eastern District of Pennsylvania, and Barbara Rowland, Assistant United States Attorney, moves the Court to strike plaintiff's demand for a jury trial for the following reasons:

1. On or about July 16, 2002, plaintiff filed a complaint in this Court alleging a cause of action under the Federal Tort Claims Act ("FTCA") for injuries allegedly sustained on September 18, 2000 arising from a slip and fall accident at the Blue Bell Post Office.
2. In her Complaint, plaintiff demands a trial by jury (Complaint at 4).
3. The FTCA, 28 U.S.C. § 2402, states in relevant part: ". . . any action against the United States under section 1346 shall be tried by the court without a jury. . ."
4. The FTCA's exclusive waiver of sovereign immunity does not extend far enough to permit a jury trial. *See, e.g. Birnbaum v. United States*, 588 F.2d 319 (2d Cir. 1978).

WHEREFORE, defendant United States of America respectfully moves the Court to strike plaintiff's demand for jury trial and for such further relief as is just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the _____ day of September 2002, I caused a true and correct copy of the foregoing United States' Motion to Strike to be served by first class United States mail, postage prepaid, upon the following:

Milton J. Frank, Esquire
Milton J. Frank & Associates
1831 Chestnut Street, 3rd Floor
Philadelphia, PA 19103

Barbara Rowland